NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA07-1123

ORA LEE WILLIAMS APPELLANT V. R.S. MCCULLOUGH, USA/SUPER D FRANCHISING, INC., SUPER D DRUG ACQUISITION COM., and SUPER D DRUG STORE APPELLEES	**Opinion Delivered** April 1, 2009 APPEAL FROM THE ST. FRANCIS COUNTY CIRCUIT COURT [NO. CV-2002-175-1] HONORABLE L.T. SIMES II, JUDGE REVERSED and REMANDED

LARRY D. VAUGHT, Chief Judge

Appellee R.S. McCullough, a suspended attorney who was undergoing disbarment proceedings, filed an attorney's lien on appellant Ora Lee Williams's case. The trial court granted McCullough a lien and summarily denied Williams's motion to set aside the alleged attorney lien and motion for summary judgment after hearing the case by ordered "letter" submissions from each party (in lieu of an evidentiary hearing on the matter). Because there was no evidence to support the trial court's finding, we reverse and remand for an evidentiary hearing on the lien question.

Appellant Ora Lee Williams was represented by McCullough in a cause of action against Super D Drugs. Her case was dismissed by the trial court without prejudice due to McCullough's failure to comply with the trial court's discovery orders. The dismissal occurred without Williams's knowledge or consent. Williams subsequently obtained

representation by attorneys Julian Fogleman and Joe Rogers.

Williams refiled her complaint, and McCullough filed an attorney lien under Ark. Code Ann. § 16-22-301 (Repl. 1999). After Williams settled her claim (for $16,000), she filed a motion to set aside the lien and a motion for summary judgment on the issue of the claimed lien. After two continuances and a hearing—which McCullough did not attend and where no testimony was taken—the trial court asked each party to submit the lien issue by letter. Williams, albeit reluctantly, agreed to such an arrangement. After reviewing the letters submitted by the parties, the trial court made the following finding: "the Court is persuaded that the equitable thing to do is to enforce the Attorney Lien in the amount of $5,333.00."

This finding by the trial court—relating to McCullough's entitlement to a lien—is supported by no evidence whatsoever. The letters submitted by counsel are not evidence. *See, e.g.*, *Tri-State Transit Co. of Louisiana v. Westbrook*, 207 Ark. 270, 276, 180 S.W.2d 121, 125 (1944) (holding that except as to those facts of which a court takes judicial notice, only evidence adduced at trial may be considered and argument of counsel is not evidence). Furthermore, the record does not indicate if the trial court found that the award was based on a validly executed attorney's lien or if it sounded in quantum meruit. As such, we are unable to make even a cursory review of the decision as the record is completely void of the legal grounds and factual support leading to the trial court's conclusion. The trial court's findings of fact are clearly erroneous because they are not supported by evidence contained in the record. *See Alfano v. Alfano*, 77 Ark. App. 62, 72 S.W.3d 104 (2002). We reverse and remand for a full hearing on the attorney-lien issue.

Reversed and remanded.

HART and BROWN, JJ., agree.